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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/780,252	02/17/2004	Pratyush Moghe	Tizer - 001	9651
50086 7590 10/10/2007 LAW OFFICE OF DAVID H. JUDSON 15950 DALLAS PARKWAY SUITE 225 DALLAS, TX 75248			EXAMINER JUNG, DAVID YIUK	
			ART UNIT 2134	PAPER NUMBER
			MAIL DATE 10/10/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/780,252

Applicant(s)

MOGHE

Examiner

David Y. Jung

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☐ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_.

## DETAILED ACTION

### CLAIMS PRESENTED

Claims 1-48 are presented.

#### *Potentially Allowable Subject Matter*

The following is a statement of reasons for the indication of allowable subject matter: Claims 1-24 potentially allowable over prior art. The prototypical model is developed from such particular details of packet capturing, packet analysis, and mining of the packet database. An important feature is that the prototypical model uses time as a factor. The way the claimed invention uses the time factor causes the prototypical model to handle changing content. In the methodology of the prior art, the time factor was not used in the same way as in the claimed invention. Indeed, the methodology of the prior art would have trouble with a changing content because of the reliance on historical data with an assumption of more stability in content.

Claims 25-48 does not contain subject matter that can overcome prior art. Some of the claims recite packet analysis. This alone is not sufficient because the prior art (as admitted by Applicant) does acquire data from packets. Some of the claims recite real-time functioning. This alone is not sufficient because the prior art does some (albeit not all of the functions as in claim 1) functions in real-time. Some of the claims recite changing content. This alone is not sufficient because the prior art does account for changing content (albeit not with the particular fashion as detailed with the recited features of claim 1). See the rejections of claims 25-48 for further details.

## CLAIM REJECTIONS

### *Claim Rejections - 35 USC § 101*

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Regarding claims 1-48, the claimed invention is directed to non-statutory subject matter. Claims recite only perfunctory recitation of functional material (packets, content, networks, data, computer readable medium, etc.). Aside from this, the claims recite only nonfunctional descriptive material. When nonfunctional descriptive material is recorded on some computer-readable medium, in a computer or on an electromagnetic carrier signal, it is not statutory since no requisite functionality is present to satisfy the practical application requirement. Merely claiming nonfunctional descriptive material, i.e., abstract ideas, stored on a computer-readable medium, in a computer, or on an electromagnetic carrier signal, does not make it statutory. See *Diehr*, 450 U.S. at 185-86, 209 USPQ at 8 (noting that the claims for an algorithm in *Benson* were unpatentable as abstract ideas because “[t]he sole practical application of the algorithm was in connection with the programming of a general purpose computer.”). Such a result would exalt form over substance.

For further guidance on the term “nonfunctional”, please see MPEP 2106.

### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

Claims 25-48 are rejected under 35 U.S.C. 102(a) as being clearly anticipated by admissions over the prior art.

The prior art, as discussed in the specification (and not merely discussed in the first few pages), refer to the previous types of analysis of anomalies. These anomalies, as noted by Applicant, already had packet analysis, real-time functioning, and changing content. Indeed, as Applicant noted, there is an entire body of knowledge regarding these matters. See, for instance, the entire bibliography of books and articles that Applicant has cited in the specification.

Some of the claims (claims 25-48 generally) recite packet analysis. This alone is not sufficient because the prior art (as admitted by Applicant) does acquire data from packets. See page 6 of the specification. Some of the claims (claims 25-28) recite real-time functioning. This alone is not sufficient because the prior art does some (albeit not all of the functions as in claim 1) functions in real-time. See, for instance, the discussion regarding intrusion detection, such as from Escamilla, Lippman, LaPadula, etc. that are noted in the specification. Intrusion detection work in real-time. Some of the claims (claims 29-35, 41-48 which recite trends, claims 36-40 which recite historical data) recite changing content. This alone is not sufficient because the prior art does account for changing content (albeit not with the particular fashion as detailed with the recited

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features of claim 1). See, for instance, the anomaly detection of Javitz, Jou, Lane, Fukanaga, Rabiner, etc. that are discussed in the specification.

***Conclusion***

The art made of record and not relied upon is considered pertinent to applicant's disclosure. The art disclosed general background.

***Points of Contact***

**Any response to this action should be mailed to:**

Commissioner of Patents and Trademarks

Washington, D.C. 20231

**or faxed to:**

(571) 273-8300, (for formal communications intended for entry)

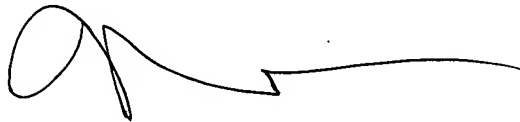
**Or:**

(571) 273-3836 (for informal or draft communications, please label "PROPOSED" or "DRAFT")

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to David Jung whose telephone number is (571) 272-3836 or Kambiz Zand whose telephone number is (272) 272-3811.

David Jung

A handwritten signature in black ink, consisting of a large, stylized 'D' followed by a long, horizontal, slightly wavy line.

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Patent Examiner

10/1/07